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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,114	01/23/2004	Diane Maria Dabkowski	J6877(C)	7895

201 7590 04/17/2007
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EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/764,114

Applicant(s)

DABKOWSKI ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-20 is/are pending in the application.
4a) Of the above claim(s) 18 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-13, 15-17, 19 and 20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-13 and 15-20 are pending. Applicant's argument's and amendments filed 2/1/07 have been entered. Claim 18 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/21/06.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 12/13/06 have been withdrawn:

None.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 7-9, 15, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO00/02532.

'532 teaches a personal cleansing composition containing an anionic and/or amphoteric surfactant and a polymeric ester comprising a polyol, a monocarboxylic acid, and a dicarboxylic acid. See Abstract. Suitable anionic surfactants include alkyl ethoxy sulfate surfactants having from 2 to 6 moles of ethylene oxide and alkyl chain lengths of C12-C18. See page 6, lines 15-30. The anionic surfactants are present in amounts from 0.1 to 30% by weight. See page 7, lines 15-30. The compositions may contain a zwitterionic surfactant in amounts from 0.1 to 20% by weight and include alkyl betaines, cocoamido propylhydroxy sultaine, etc. See page 12, lines 20-30. Additionally, the compositions contain a polymeric conditioning agent in amounts from 0.01 to 5% by weight and include cationic cellulose resins, etc. See page 14, line 5 to page 15, line 256. Additionally, the compositions may include a water-insoluble oil such as a modified silicone oil such as octyl and decyl methicone. See page 20, lines 15-35. The compositions may include viscosity control agents such as magnesium sulfate and other electrolytes and from about 20% to 99.89% by weight of water. See page 27, lines 18-30. Note that, the compositions as exemplified by '532 teach the use of sodium chloride in an amount of 0.5% by weight.

Note that, with respect to the Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1, the Examiner asserts that the broad teachings of '532 would suggest compositions having the same Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1 because '532 suggests compositions containing the same components in the same proportions as recited by the instant claims.

'532 does not teach, with sufficient specificity, a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '532 suggests a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-4, 6-10, 15, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al (US 6,165,454).

Patel et al teach a mild, aqueous, foaming, and conditioning detergent composition comprising 4 to 50% of a deterative surfactant selected from the group consisting of C8-C18 alkyl sulfates, C8-C18 alkyl ethoxy ether sulfates containing 1 to 5 ethoxy groups, etc, and optionally at least one of 0.1 to 5% by weight of an anionic hydrotrope, 0.1 to 15% of an amphoteric surfactant selected from the group consisting of C8-C18 alkyl betaines, C9-C18 alkyl sulfobetaines, etc., 0.1 to 4% of a nonionic surfactant provided that the total amount of deterative surfactant is preferably in the range of 6 to 30%; from 0.01 to 10% of a water-insoluble conditioning agent which is selected from the group consisting of 0.1 to 6% of a water-insoluble silicone selected from the group consisting of dimethicones and silicones and a mixture of at least one silicone with 0.01 to 3% of a cationic polymer such as a quaternized cellulosic polymer; from 0.1 to 5% of an acrylic stabilizing agent, and the balance water. See column 2, line 30 to column 3, line 20. More specifically, suitable amphoteric surfactants include cocoamidopropyl betaines, cocamidopropylhydroxy sultaine, etc. See column 5, lines 35-50. Suitable quaternized cellulosic polymers include Polyquaternium-6, Polyquaternium-10, etc. See column 6, lines 1-20. The water-insoluble silicones have viscosity in the range from 5 to 100,000. See column 3, lines 20-60.

Additionally, there may be other ingredients added to the composition including thickeners in amounts not greater than 1% by weight, viscosity controlling agents such as sodium chloride in an amount from 0.1 to 3% by weight, fragrance in amounts from

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0.01 to 1.5% by weight, antibacterials, coloring agents, pH adjusters, etc. See column 7, lines 1-60.

Note that, with respect to the Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1, the Examiner asserts that the broad teachings of Patel et al would suggest compositions having the same Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1 because Patel et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Patel et al do not teach, with sufficient specificity, a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Patel suggest a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile,

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water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-4, 6-9, 11, 12, 15, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alvarado et al (US 2003/0022799).

Alvarado et al teach a foamable, shampoo composition for cleansing hair which comprises about 0.005 to about 5% of a cationic deposition polymer, about 10 to about 20% of an anionic surfactant which is selected from the group consisting of an alkyl ether sulfate with at least about 2 moles of ethoxylation, about 0.5 to 1% of an organic salt of a carboxylic acid, about 6 to 15% of sorbitan derivative, about 3 to about 6% of a zwitterionic surface active compound, about 0.25 to 5% of an amphoteric surfactant, about 0.75 to about 1.5% of an alkoxyated carboxylic acid, about 0.1 to about 5% of a silicone copolyol, optionally an aerosol propellant, and water. See Abstract. Suitable cationic polymers include cationic cellulose derivatives, etc. See paras. 60-65. Suitable zwitterionic surfactants include cocamidopropyl betaine, cocamidopropyl hydroxysultaine, etc. See para. 84. Examples of suitable alkoxyated carboxylic acids include PEG 150 distearate, etc. See para. 93. Silicone copolyols that may be used in the composition include dimethicone, which is a dimethylsiloxane polymer having polyoxyethylene and/or polyoxypropylene side chains. Also, the compositions may contain other ingredients such as humectants, fragrances, preservatives, buffers, etc. See para. 102. Note that, the Examiner asserts that "about 10%" by weight of an alkyl ether sulfate with at least about 2 moles of ethoxylation as taught by Alvarado et al would overlap with and suggest about 8% by weight of an alkyl ether sulfate having at

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least 3 moles of ethoxylation as recited by the instant claims. Alternatively, even if "about 10%" by weight of an alkyl ether sulfate with at least about 2 moles of ethoxylation does not overlap with about 8% by weight of an alkyl ether sulfate having at least 3 moles of ethoxylation as recited by the instant claims, the Examiner asserts that one of ordinary skill in the art would be motivated to use about 8% by weight of an alkyl ether sulfate with at least about 3 moles of ethoxylation in the composition taught by Alvarado et al, with a reasonable expectation of success, because one of ordinary skill in the art would expect similar results when using about 8% by weight of an alkyl ether sulfate with at least about 3 moles of ethoxylation in the composition taught by Alvarado et al based on its teaching of about 10% by weight of an alkyl ether sulfate with at least about 2 moles of ethoxylation. Note that, a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05.

Note that, with respect to the Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1, the Examiner asserts that the broad teachings of Alvarado et al would suggest compositions having the same Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1 because Alvarado et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

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Alvarado et al do not teach, with sufficient specificity, a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Alvarado et al suggest a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-4, 6-10, 15, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baravetto et al (US 6,174,522).

Baravetto et al teach aqueous conditioning shampoo compositions containing a surfactant component in a shampoo with a particulate insoluble, dispersed, nonvolatile conditioning agent having a dual particle size range, suspending agent and deposition polymer. See Abstract. Suitable surfactants include anionic, amphoteric, zwitterionic

surfactants, etc., and mixtures thereof which may be used in amounts from about 5% to about 50% by weight. Suitable anionic surfactants include alkyl and alkyl ether sulfates containing from about 12 to about 18 carbon atoms and from 1 to about 10 moles of ethylene oxide. Suitable amphoteric surfactants include betaines, sultaines, etc., such as amidohydroxysultaines, cocoamidopropylbetaine, etc. See column 7, line 50 to column 8, line 50; column 24, lines 15-69.

Additionally, the composition contains non-volatile silicone conditioning agents which have a viscosity between 5 and 1,000,000 centistokes and include insoluble silicone gums. See column 12, line 15 to column 15, line 55. Deposition polymers may also be used in the compositions and include those such as Polyquaternium-10. See column 21, lines 1-60. Water is present in the compositions in amounts from 20% to 94% by weight of the composition. See column 22, lines 40-50. Optional components such as perfumes, preservatives, skin active agents, sunscreens, thickeners, vitamins, etc., may be used in the composition in amounts from 0.001 to 10% by weight of the composition. See column 22, line 50 to column 23, line 5. Note that, a salt such as sodium chloride can be added to the mixture to thin or thicken the final product. See column 24, lines 1-10.

Note that, with respect to the Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1, the Examiner asserts that the broad teachings of Baravetto et al would suggest compositions having the same Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1 because

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Baravetto et al suggests compositions containing the same components in the same proportions as recited by the instant claims.

Baravetto et al do not teach, with sufficient specificity, a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Baravetto et al suggest a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-10, 15, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fairley et al (US 2002/0192180) or WO 99/53889.

Fairley et al teach an aqueous shampoo composition comprising, in addition to water, a cleansing surfactant, preferably an anionic surfactant, a dispersed non-volatile,

water-insoluble oily conditioning agent, and a cationic polymer. Suitable anionic surfactants include alkyl ether sulphates containing from 8 to 18 carbon atoms and 1 to 10 moles of ethylene oxide per molecule. Co-surfactants may also be used in the compositions in amounts from 0 to 8% by weight and include alkyl amidopropyl betaines, alkyl amidopropyl hydroxysultaines, etc. See paras. 50-61. Suitable cationic polymers include quaternized cationic cellulose such as Polyquaternium-10, etc. See para. 90. Additionally, optional ingredients may be used in the compositions including suspending agents, thickeners, perfumes, salts, sunscreen materials, antimicrobial agents, etc. See para. 96. Also, the compositions may include a conditioning agent such as preformed silicone microemulsions under the tradenames DC2-1865 and DC2-1870. The emulsified silicones typically have a viscosity of at least 10,000 centipoise and suitable silicones for use in the emulsions/microemulsions include cross-linked dimethiconol gum. See paras. 103-107. Fairley et al specifically teach compositions in which salts such as sodium chloride is used in the composition. See para. 148.

'889 teaches an aqueous shampoo composition containing, in addition to water, at least one cleansing surfactant, a cationic deposition polymer, a silicone component consisting of a blend of emulsified particles of an insoluble silicone, in which the emulsified particles of insoluble silicone are incorporated into the shampoo composition as a preformed aqueous emulsion having an average silicone particle size in the emulsion and in the shampoo composition of from 0.15 to 30 microns, and microemulsified particles of an insoluble silicone in which, in which the microemulsified particles of insoluble silicone are incorporated into the shampoo composition as a

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preformed aqueous microemulsion having an average silicone particle size in the microemulsion and in the shampoo composition of less than 0.1 microns. See Abstract. Examples of suitable preformed microemulsion include DC2-1865 and DC2-1870 and silicone gums are also available in a pre-microemulsified form. The viscosity of the silicone itself is typically at least 10,000 centipoise. See page 6, line 20 to page 7, line 36. The total amount of silicone is from 0.3 to 5% by weight of the composition. See page 9, lines 1-12.

The composition may include one or more cleaning surfactants which may be used singularly or in combination and are selected from anionic, amphoteric, zwitterionic surfactants, and mixtures thereof. Suitable anionic surfactants include alkyl ether sulfates in which the alkyl group contains from 8 to 18 carbon atoms and may contain from 1 to 10 ethylene oxide units per molecule. See page 9, line 10 to page 10, line 10. Examples of amphoteric and zwitterionic surfactants include alkyl amine oxides, alkyl betaines, alkyl amidopropyl betaine, alkyl amidopropyl hydroxysultaines, etc. The total amount of surfactant in the shampoo compositions is generally from 0.1 to 50% by weight of the composition. See page 12, lines 15-20. Suitable cationic polymers include cationic cellulose such as Polyquaternium-10, etc. See page 15, lines 20-30. Optional ingredients may be used including antimicrobial agents, colorants, dyes, viscosity modifiers (e.g., thickening agents), preservatives, fragrances, sunscreens, chelating agents, etc. See page 18, line 25 to page 21, line 25. A salt such as sodium chloride is used in an amount of 2% in a composition specifically taught by '889.

Note that, with respect to the Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1, the Examiner asserts that the broad teachings of Fairley et al would suggest compositions having the same Zein solubility, permeability, and wet-combing force properties as recited by instant claim 1 because Fairley et al or '889 suggest compositions containing the same components in the same proportions as recited by the instant claims.

Fairley et al or '889 do not teach, with sufficient specificity, a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Fairley et al or '889 suggest a cleaning composition having the specific physical parameters containing an alkyl ethoxy sulfate surfactant, a betaine surfactant, a hydroxysultaine surfactant, a non-volatile, water-insoluble silicone, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 11-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al (US 6,165,454), Fairley et al (US 2002/0192180), WO99/53889, WO00/02532, or Baravetto et al (US 6,174,522) as applied to the rejected claims above, and further in view of Booker et al (US 2003/0114323).

Patel et al, Fairley et al, '532, '889, and Baravetto et al are relied upon as set forth above. However, none of the references teach the use of PEG-150 distearate in addition to the other requisite components of the composition as recited by the instant claims.

Booker et al teach a moisturizing detergent composition that is mild to the skin and eyes. The composition includes a cationic polymer, a monoester emollient, a di- and/or tri-ester emollient, and a surfactant. The compositions are useful as shampoos, washes, baths, gels, lotions, creams, and the like. See Abstract. Surfactants suitable for use include anionic, nonionic, amphoteric, betaine, or cationic, as well as mixtures thereof. Suitable anionic surfactants include alkyl sulfates, alkyl ether sulfates, isethionates, etc., wherein the alkyl group has from about 6 to about 30 carbon atoms, alkyl betaines, alkylamido betaines, alkylamido sultaines, etc. See paras. 40-45. Additionally, the compositions may include one or more optional ingredients including a pearlescent or opacifying agent, a thickening agent, humectants, chelating agents, colorants, fragrances, preservatives, etc. See para. 46. Thickening agents which are capable of imparting the appropriate viscosity to the composition include PEG-150 distearate, etc. See para. 50.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a thickening agent such as PEG-150 distearate in the cleaning composition taught by Patel, '532, Fairley et al, '889, or Baravetto et al, with a reasonable expectation of success, because Booker et al teach the use of PEG-150 distearate as a thickening agent in a similar cleaning composition and further, Patel et al, '532, Fairley et al, '889, or Baravetto et al teach the use of thickening agents in general.

Note that, with respect to the Zein solubility, permeability, and wet-combing force properties as recited by instant claim 17, the Examiner asserts that the broad teachings of Patel et al, '532, Fairley et al, '889, or Baravetto et al, all in combination with Booker et al, would suggest compositions having the same Zein solubility, permeability, and wet-combing force properties as recited by instant claim 17 because Patel et al, '532, Fairley et al, '889, or Baravetto et al, all in combination with Booker et al, suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baravetto et al (US 6,174,522) as applied to claim 1-4, 6-10, and 13-16 above, and further in view of Fairley et al (US 2002/0192180).

Baravetto et al are relied upon as set forth above. However, Baravetto et al do not teach the use of silicone microemulsion in addition to the other requisite components of the composition as recited by the instant claims.

Fairley et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a silicone microemulsion in the composition taught by Baravetto et al, with a reasonable expectation of success, because Fairley et al teach the equivalence of silicone microemulsions to silicone emulsions in a similar cleaning composition and, further, Baravetto et al teach the use of silicone emulsions in general.

Claims 5 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over WO00/02532 as applied to claims 1-4, 7-9, 15, 16, 19, and 20 above, and further in view of Fairley et al (US 2002/0192180).

'532 is relied upon as set forth above. However, '532 does not teach the use of the specific silicone in addition to the other requisite components of the composition as recited by the instant claims.

Fairley et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a silicone microemulsion or emulsion in the composition taught by '532, with a reasonable expectation of success, because Fairley et al teach use of silicone microemulsions to silicone emulsions as conditioning agents in a similar cleaning composition and, further, '532 teaches the use of water-insoluble silicone agents in general.

Response to Arguments

At the outset, it should be noted that Applicant has incorrectly categorized WO99/53889 as a secondary reference as indicated on page 14 of the response wherein Applicant states that "WO '889 does not remedy the shortcomings discussed

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above of Fairley et al as a prior art reference". As indicated above, claims 1-10, 15, 16, 19, and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Fairley et al (US 2002/0192180) or WO 99/53889, so it is clear that '889 is being used as a primary reference.

With respect to WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889, Applicant states that each of these references do not suggest the claimed ratios, do not disclose the upper limit on the alkyl ethoxy sulfate component of about 8% as recited in claim 1 and 17, does not restrict compositions to those that are not potential eye irritants based on the objective criteria recited in claims 1 and 17, and do not disclose the limitation of about 2% on the additional harsh surfactants recited in claims 1 and 17. Furthermore, Applicant states that each of these references teach away from the Applicant's claimed invention since the examples in each of these references teach compositions containing more alkyl ethoxy sulfate and added surfactant such as ammonium lauryl sulfate than permitted in the compositions as recited by the instant claims. In response, note that, the teachings of a reference are not limited to the preferred embodiments. The Examiner maintains that each of '532, Patel et al, Baravetto et al, Fairley et al, or '889 teach a range of alkyl ethoxy sulfate used in the compositions which overlaps with the range of about 6% to about 8% as recited by the instant claims. For example, Patel et al teach that the compositions may contain from 6% to 30% by weight of an anionic detergent such as an alkyl ether sulfate having from 2 to 6 moles of ethylene oxide which overlaps with the range of alkyl ethoxy sulfate as recited by the instant claims.

Furthermore, as stated above, with respect to Alvarado et al, the Examiner asserts that "about 10%" by weight of an alkyl ether sulfate with at least about 2 moles of ethoxylation would overlap with and suggest about 8% by weight of an alkyl ether sulfate having at least 3 moles of ethoxylation as recited by the instant claims. Alternatively, even if "about 10%" by weight of an alkyl ether sulfate with at least about 2 moles of ethoxylation does not overlap with about 8% by weight of an alkyl ether sulfate having at least 3 moles of ethoxylation as recited by the instant claims, the Examiner asserts that one of ordinary skill in the art would be motivated to use about 8% by weight of an alkyl ether sulfate with at least about 3 moles of ethoxylation in the composition taught by Alvarado et al, with a reasonable expectation of success, because one of ordinary skill in the art would expect similar results when using about 8% by weight of an alkyl ether sulfate with at least about 3 moles of ethoxylation in the composition taught by Alvarado et al based on its teaching of about 10% by weight of an alkyl ether sulfate with at least about 2 moles of ethoxylation. Note that, a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05.

Additionally, the Examiner asserts that while each of WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889 teach several examples containing greater than 2% by weight of an added surfactant such as an alkyl sulfate, the teachings of a reference are not limited to the preferred embodiments. The

Examiner asserts that the broad teachings of WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889 disclose embodiments which do not require the addition of specific added surfactants which would meet the limitation of "less than about 2% of an added surfactant selected from the group consisting of alkyl sulfates, alkyl or alkyl aryl sulfonates, ethoxylated alkylphenols, and ethanolamides of aliphatic acids" as recited by instant claims 1 and 17. The Examiner maintains that the broad teachings of WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889 suggest compositions having the same ratio of betaine surfactant to hydroxysultaine and alkyl ethoxy sulfate to the sum of the weights of betaine surfactant and hydroxysultaine as recited by the instant claims.

Furthermore, the Examiner maintains that WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889 suggest that the amount of eye irritating components such as anionic surfactants used in the compositions may be varied, and one skilled in the art would recognize that varying the amounts of eye irritating components such as anionic surfactants would make a significant difference with respect to eye irritation. Thus, the Examiner maintains that the broad teachings of Patel et al, Baravetto et al, or Fairley et al suggest compositions having the same % permeability of fluorescein leakage less than about 10% as measured by the Fouorescein Leakage Assay as recited by the instant claims because Baravetto et al, Patel et al, or Fairley et al suggest compositions containing the same components in the specific amounts as recited by the instant claims.

With respect to the rejection of claims 11-13 and 17 under 35 USC 103 using WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889, all in combination with Booker et al, Applicant states that Brooker et al do not remedy the shortcomings of WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889. In response, note that, as set forth above, the Examiner maintains that WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889 are sufficient to render the instant claims obvious under 35 USC 103. Brooker et al is a secondary reference relied upon for its teaching of PEG-150 distearate. The Examiner maintains that one of ordinary skill in the art would clearly have been motivated to use PEG-150 distearate in the compositions taught by WO00/02532, Patel et al, Alvarado et al, Baravetto et al, Fairley et al, or WO99/53889, with a reasonable expectation of success, because Booker et al teach the use of PEG-150 distearate as a thickening agent in a similar cleaning composition and further, Patel et al, '532, Fairley et al, '889, or Baravetto et al teach the use of thickening agents in general.

With respect to the rejection of claims 5 and 6 under 35 USC 103 using WO00/02532 in combination with Fairley et al, Applicant states that Fairley et al do not remedy the shortcomings of WO00/02532. In response, note that, Fairley et al is a secondary reference relied upon for its teaching of a silicone microemulsion or emulsion. The Examiner maintains that one of ordinary skill in the art would clearly have been motivated to use a silicone microemulsion or emulsion in the composition taught by '532, with a reasonable expectation of success, because Fairley et al teach

use of silicone microemulsions to silicone emulsions as conditioning agents in a similar cleaning composition and, further, '532 teaches the use of water-insoluble silicone agents in general.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
April 13, 2007